BEFORE THE APPEALS BOARD FOR THE KANSAS DIVISION OF WORKERS COMPENSATION

JOSEPHINE PESTOCK	}
Claimant VS.	Docket No. 106 204
SWIFT-ECKRICH Respondent) Docket No. 196,204
AND	
SELF INSURED Insurance Carrier	

ORDER

Claimant appeals from a Preliminary Hearing Order entered by Administrative Law Judge Robert H. Foerschler on March 27, 1995, that denied claimant's request for compensation benefits.

ISSUES

Claimant raises the sole issue of whether she sustained a personal injury by accident that arose out of and in the course of her employment with the respondent on the date alleged.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

After reviewing the preliminary hearing record and considering the briefs of the parties, the Appeals Board finds as follows:

The issue raised by the claimant is a jurisdictional issue enumerated in K.S.A. 44-534a(a)(2) subject to review by the Appeals Board. However, the only benefit that the claimant requested from the respondent was payment of past due medical expenses in the amount of forty-five dollars (\$45). The Administrative Law Judge denied this request, finding no present need for further medical treatment and that the claimant had presented little clinical evidence substantiating that she had suffered heat exhaustion.

The preliminary hearing statute, K.S.A. 44-534a(a)(1) provides that the employee or the employer may make application for a preliminary hearing on the issues of furnishing medical treatment and the payment of temporary total disability compensation. The respondent, during the pendency of this appeal, tendered payment by check to the claimant for the past due medical expenses. Claimant refused the acceptance of this check and returned the check to respondent. Respondent argues that such offer of

IT IS SO ORDERED

payment of the past due medical expenses disposes of this appeal as there is no longer a controversy in reference to this issue.

Claimant, on the other hand, contends that the issue of whether or not the claimant suffered an accidental injury arising out of and in the course of her employment remains before the Appeals Board for a decision.

The Appeals Board agrees with the respondent and finds that the purpose of K.S.A. 44-534a is for either the employee or the employer to have an opportunity to present evidence at a preliminary hearing before the Administrative Law Judge on the issues of furnishing of medical treatment and payment of temporary total disability benefits. In this case, the issue involving payment of the medical bill was resolved when the respondent tendered payment. Accordingly, the Appeals Board does not have jurisdiction to review a preliminary hearing order when the requested benefit has been paid.

WHEREFORE, it is the finding, decision, and order of the Appeals Board, for the reasons stated above, that the Application for Review filed by the claimant is dismissed as the Appeals Board lacks jurisdiction to review the Order of Administrative Law Judge Robert H. Foerschler dated March 27, 1995.

Dated this day of Ju	ne 1995.
	BOARD MEMBER
	BOARD MEMBER
	BOARD MEMBER

c: Leah Brown Burkhead, Mission, KS Mark E. Kolich, Kansas City, KS Robert H. Foerschler, Administrative Law Judge George Gomez, Director